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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,172	11/10/2000	Federico Garcea	MS154756.1	4256

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AMIN & TUROCY, LLP
24TH FLOOR, NATIONAL CITY CENTER
1900 EAST NINTH STREET
CLEVELAND, OH 44114

EXAMINER

PATEL, HARESH N

ART UNIT	PAPER NUMBER
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2154

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DATE MAILED: 06/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/710,172

Applicant(s)

GARCEA ET AL

Examiner

Haresh Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 17-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-42 are presented for examination.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-16, are drawn to “a system utilizing a metric monitor system and a time aggregation component for each member to aggregate member specific metrics over time”, classified in class 709, subclass 224.
 - II. Claims 17-21, are drawn to “a system utilizing operational event metric data, event filters and event identifier to process a request from a requestor for aggregated operational metrics”, classified in class 709, subclass 318.
 - III. Claims 22-24, are drawn to “a system utilizing plurality of members, to determine a member health state based on a member specific health rule set, and to apply a health entity aggregation rule set to determine a health state of the entity”, classified in class 709, subclass 201.
 - IV. Claims 25-38, are drawn to “a method receiving a request from a requestor for an operational metric for an entity prior to querying the operational metric, forming a unified result set before returning the unified result to the requestor, defining the operational metric data to be logged and replicating a configuration”, classified in class 709, subclass 207.

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- V. Claims 39-42, are drawn to “a system setting a configuration at a member defining the operational metric data to be logged at each of plurality members and replicating a configuration to each of plurality of members”, classified in class 709, subclass 229.

3. The inventions are distinct, each from the other because of the following reasons:

Inventions I, II, III, IV and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as lacking “a system utilizing operational event metric data, event filters and event identifier to process a request from a requestor for aggregated operational metrics”, particulars. Invention II has separate utility such as lacking “a system utilizing plurality of members, to determine a member health state based on a member specific health rule set, and to apply a health entity aggregation rule set to determine a health state of the entity”, particulars. Invention III has separate utility such as lacking “a method receiving a request from a requestor for an operational metric for an entity prior to querying the operational metric, forming a unified result set before returning the unified result to the requestor, defining the operational metric data to be logged and replicating a configuration”, particulars. Invention IV has separate utility such as lacking “a system setting a configuration at a member defining the operational metric data to be logged at each of plurality members and replicating a configuration to each of plurality of members”, particulars. See MPEP 806.05(d).

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4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are distinct for the reasons given above and the extensive search required for one group is not required for the other groups, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. A telephone call was made to Himanshu S. Amin on June 4, 2004 to request an oral election to the above restriction requirement. Himanshu S. Amin elected group I, i.e., claims 1-16, with traverse.

8. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Specification

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9. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

10. The abstract is objected. Some of the informalities are:

a. The abstract should contain key components of the invention, i.e., performance metrics, system events, health, server state, computers, servers, clusters, collection of data of array of servers, etc.

Appropriate correction is required.

Information Disclosure Statement

11. An initialed and dated copy of Applicant's IDS form 1449, Paper No. 2, is attached to the instant Office action.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

12. Claims 1-16 are software per se that is not tangibly embodied on a computer readable medium and therefore lacks a practical application because it alone cannot produce its intended outcome.

Claim Rejections - 35 USC § 102

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13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. Claims 1-4, 6, 7, 9-14, 16, are rejected under 35 U.S.C. 102(e) as being anticipated by Teegan et al. 6,748,555 (Hereinafter Teegan).

15. As per claim 1, Teegan teaches the following:

a system for gathering and aggregating operational metrics of a plurality of members configured as an entity (e.g., abstract), comprising

at least one of the plurality of members having a gathering and aggregation system adapted to gather operational metric data from the plurality of members and aggregate the operational metric data into a unified result set (e.g., abstract).

16. As per claims 2-4, 6, 7, 9-14, 16, Teegan teaches the following:

each of the plurality of members have a gathering and aggregation system such that the unified result set can be gathered and aggregated from any of the plurality of members (e.g., col., 5, lines 27 – 46),

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a metric monitor system for each of the plurality of members, the metric monitoring system monitoring member specific metrics and employing a time aggregation component to aggregate member specific metrics over time (e.g., col., 11, lines 1-20),

the time aggregation component being further operable to aggregate member specific performance metrics data into data of larger time periods and larger resolutions (e.g., col., 11, lines 1-20),

the gathering and aggregation system further comprising a performance metric aggregation component adapted to gather and aggregate performance metric data values of a particular time period and resolution from the plurality of members based on a time period requested by a requestor (e.g., col., 15, line 28 – col., 16, line 57),

the performance metric aggregation component being operable to aggregate data performance values having similar data times to form a unified result set over the particular time period and time resolution (e.g., col., 11, lines 1-20),

the plurality of members logging member specific operation metrics to a data store corresponding to that particular member (e.g., col., 8, lines 38 – 55),

the gathering and aggregation system being further adapted to receive a request from a requestor for operational metric information for the entity and return the unified result set back to the requestor (e.g., col., 13, lines 44 – 65),

the requestor being one of an external process, an internal process, an external consumer, a user interface and another entity (e.g., col., 13, lines 44 – 65),

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at least one of the plurality of members being configurable to receive a configuration setting defining the operational metric information to be logged and replicating the configuration setting to the plurality of members (e.g., col., 8, lines 38 – 55),

any of the plurality of members are configurable to receive a configuration setting defining the operational metric information to be logged (e.g., col., 8, lines 38 – 55),

the operational metric data being at least one of performance metric data, event metric data., status metric data and health metric data (e.g., abstract),

the gathering, and aggregation system being further adapted to provide a unified result set of operational metric data for a single member (e.g., col., 3, line 24 – col., 4, line 16).

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 5, 8 and 15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Teegan in view of “Official Notice”.

19. As per claims 5 and 8, Teegan teaches the claimed limitations as rejected under claims 4 and 7. However, Teegan does not specifically mention about calculating resolution taking one of a minimum, a maximum, a last and a weighted average of a data.

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“Official Notice” is taken that both the concept and advantages of providing calculating resolution taking one of a minimum, a maximum, a last and a weighted average of a data is well known and expected in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include calculating resolution taking one of a minimum, a maximum, a last and a weighted average of a data with the teachings of Teegan in order to facilitate generating of the resolution as per user desired resolution method. Based on a user needs, the user would specify a minimum, a maximum, a last or a weighted average for the creation of resolution of the aggregated data for statistical purpose.

20. As per claim 15, Teegan teaches the claimed limitations as rejected under claim1. However, Teegan does not specifically mention about compensating for invalid operational metric data.

“Official Notice” is taken that both the concept and advantages of providing compensating for invalid operational metric data is well known and expected in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include compensating for invalid operational metric data with the teachings of Teegan in order to facilitate handling the operational metric data. When the operational metric data is invalid, compensating the invalid data would provide further handling of the data, rather than just dropping the invalid data.

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Conclusion

The rational and concept of the applicant's invention (i.e., use of distributed agent/software among loosely hierarchal coupled devices to aggregate monitored data from the plurality of devices acting together as an entity) has been clearly anticipated by cited reference (same assignee) in past. Applicant's invention does contain few minor additional matters that facilitate the concepts of the applicant's invention. However, the additional minor matters are well known in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (703) 605-5234. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee, can be reached at (703) 305-8498.

The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Haresh Patel

June 8, 2004


JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100